IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

CRP.No. 286 of 2003()

AGAINST THE ORDER DATED 18/06/2002 IN EA.210/2001 IN EP.68/99
IN OS.9/1998 of SUB COURT, MANJERI

.....

REVN. PETITIONER: PETITIONER - DECREE HOLDER:

STATE BANK OF TRAVANCORE,
NILAMBUR BRANCH, BY MANAGER.

BY ADV. SRI.K.K.JOHN

RESPONDENTS: RESPONDENT - JUDGMENT DEBTOR:

A.K.SHOUKATH ALI S/O. ALU,
PROPRIETOR, MYTHRI COTTON INDUSTRIES,
ARAKKAL HOUSE, H.S. ROAD, CHANDAKUNNU,
NILAMBUR AMSOM.

BY ADV. SRI.K.M.SATHYANATHA MENON

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN J.

C.R.P.No.286 OF 2003

Dated this the 16th day of July, 2007

O R D E R

Revision Petitioner is the decree holder in O.S.No.9/98. He instituted the suit for realisation of the amount due to him and secured by way of mortgage. Eventually, a decree was passed under Order 34 Rule 3 of the C.P.C. The petitioner proceeded to execute the decree. Finding that there are no good purchasers, he filed the present application to attach a property other than the mortgaged property stating that the property is sought to be attached, with a view to evade payment to the decree holder, is attempted to be sold by the judgment debtor. The judgment debtor has got only 1/3rd share. The court below dismissed the application holding that an extent of 10 cents of land was already mortgaged to the bank and the bank is entitled to realise the amount by sale of the same and actually the property was also put for auction; but there was no bidders. That is not a reason to proceed to attach another property belonging to the judgment debtor already mortgaged to the bank in another transaction. Eventually if the property mortgaged is sold and if there is any amount left unrealised towards the

decree amount, the petitioner could proceed against the other property in terms of the decree passed. The fact that there was no good buyers is not a reason to proceed to attach any other property. Petitioner as a decree holder however did not seek permission to buy the property already mortgaged. It is his contention that the mortgaged property has no access. If so, he could have accepted the same as security for the money advanced. Hence, that is not a reason to circumvent and to attach any other property before sale of the schedule property, especially in the terms of the decree already passed in the present case. In such circumstances, I find no good reason to interfere with the order passed.

C.R.P. is dismissed.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.286 OF 2003

O R D E R

16th July, 2007